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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
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11 RODNEY L. EMIL,

12 Petitioner,

13 vs.

14 E.K. McDANIEL, *et al.*,

15 Respondents.
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) 3:02-cv-00311-RLH-RAM
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ORDER

17 This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a
18 Nevada state prisoner represented by counsel.
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20 On January 27, 2011, through counsel, petitioner filed a third amended petition. (ECF No.
21 49). On February 17, 2011, respondents filed a motion to dismiss, or in the alternative, motion for a
22 more definite statement. (ECF No. 52). Petitioner filed an opposition to the motion. (ECF No. 62).
23 Respondents did not exercise their right to file a reply.

24 By order filed August 10, 2011, this Court denied respondents' motion to dismiss, or in the
25 alternative, motion for a more definite statement. (ECF No. 63). In the order, this Court directed
26 respondents to file an answer within 45 days. (ECF No. 63, at p. 3).

1 On September 23, 2011, respondents filed a motion for an extension of time. (ECF No. 66).
2 Respondents inform the Court that they have just discovered that the record is incomplete. (*Id.*, at ¶
3 3). Respondents seek an extension of time until December 2, 2011, to file a response to the amended
4 petition. The Court will grant respondents an extension of 45 days. If additional time is needed,
5 respondents may seek a further extension, not to exceed three requests.

6 Respondents also seek reconsideration of this Court's order, specifically, respondents seek
7 leave to file another motion to dismiss. (ECF No. 67). Respondents state that "the previous motion
8 [to dismiss] was preliminary in nature" (*Id.*, at ¶ 6). Respondents' request is denied. In the
9 order denying respondents' prior motion to dismiss, this Court directed respondents to file an answer
10 within 45 days. The order specified that: "No further motions to dismiss will be permitted." (ECF
11 No. 63, at p. 3). The Court further instructed that: "If respondents have any procedural arguments,
12 such arguments must be set forth in the answer, in addition to a substantive discussion on the merits
13 of all grounds set forth in the amended petition." (ECF No. 63, at p. 3). As such, respondents'
14 instant motion to file a successive motion to dismiss is denied.

15 Finally, respondents have filed a motion to substitute Renee Baker in place of E.K. McDaniel
16 as respondent, because Baker has succeeded McDaniel as Warden of Ely State Prison. (ECF No.
17 65). Good cause appearing, the motion for substitution of Renee Baker as respondent is granted.

18 **IT IS THEREFORE ORDERED** that respondents' motion to substitute Renee Baker as
19 respondent, in place of E.K. McDaniel (ECF No. 65) is **GRANTED**. The Clerk of Court **SHALL**
20 **MODIFY** the docket to reflect Renee Baker as the respondent in this action.

21 **IT IS FURTHER ORDERED** that respondents' motion for reconsideration to allow the
22 filing of a successive motion to dismiss (ECF No. 67) is **DENIED**.

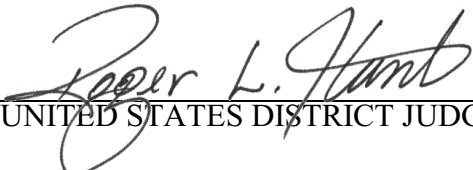
23 **IT IS FURTHER ORDERED** that respondents' motion for an extension (ECF No. 66) is
24 **GRANTED, IN PART**, to the extent that **45 days** are allowed for the filing of an answer.

1 **IT IS FURTHER ORDERED** that within **forty-five (45) days from the date of this order**,
2 respondents **SHALL FILE AN ANSWER** to the third amended petition (ECF No. 49). The answer
3 shall substantively address the merits of all grounds and sub-parts of the third amended petition, as
4 well as all procedural grounds that respondents may wish the Court to consider. **No further motions**
5 **to dismiss, or requests to file the same, will be entertained.** In filing the answer, respondents shall
6 comply with the requirements of Rule 5 of the Rules Governing Proceedings in the United States
7 District Courts under 28 U.S.C. §2254.

8 **IT IS FURTHER ORDERED** that petitioner shall file the reply to the answer not later than
9 **forty-five (45) days** after being served with the answer.

10 **IT IS FURTHER ORDERED** that **petitioner SHALL**, within **ten (10) days from the date**
11 **of this order**, supply this Court with a courtesy (paper) copy of all exhibits presented in support of
12 the third amended petition. Courtesy copies shall be mailed to the Clerk of Court, 400 S. Virginia
13 St., Reno, NV, 89501, and directed to the attention of “Staff Attorney” on the outside of the mailing
14 address label. Moreover, in the future, all parties shall provide courtesy copies of all exhibits
15 submitted to the Court in this case, in the manner described above.

16 Dated this 27th day of September, 2011.

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19 UNITED STATES DISTRICT JUDGE
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